



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,039	03/16/2004	Keith S. Smothers	030782-0004	1237

22204 7590 11/30/2004

NIXON PEABODY, LLP
401 9TH STREET, NW
SUITE 900
WASHINGTON, DC 20004-2128

EXAMINER

HAYES, BRET C

ART UNIT	PAPER NUMBER
----------	--------------

3644

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,039

Applicant(s)

SMOTHERS, KEITH S.

Examiner

Bret C Hayes

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 06 JUL 2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claims 2, 5, 6, 9, 14 – 16, 20 are 25 are objected to because of the following informalities: it has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform; it does not constitute a limitation in any patentable sense (*In re Hutchinson*, 69 USPQ 138). Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 – 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Re – claim 1, lines 6 and 7, the recitation “if the feeding assembly and the feed reservoir are disengaged” is conditional, and therefore, ambiguous, (and akin to reciting “and/or”, which would also be rejected). While examiner believes to understand the intent, where multiple conditions may exist, Applicant would do better to more positively recite those conditions as clearly and concisely as possible. Examiner suggests completely removing the word “if” and replacing the above quoted passage with something to the effect --upon the feeding assembly becoming disengaged from the feed reservoir--, --upon disengagement of the feeding assembly from the feed reservoir--, or similar, for clarity.

Art Unit: 3644

5. Re – claim 8, the recitation of “an insect deterrent” is unclear. To deter is to prevent or discourage from acting, as by means of fear or doubt, and a deterrent, then, would prevent or discourage acting, as by means of fear or doubt. An insect is not capable of fear or doubt, as best understood, and therefore cannot be prevented or discouraged, as by means of fear or doubt.

Examiner suggests more positively reciting the claimed invention, such as, from paragraph [0033], of the specification, --an insect barrier--, for clarity.

6. Re – claim 9, the recitation at line 3, that “the feeding assembly [is] adapted to *unreleasably* engage” is rejected. In this case, even the strongest of bonds between two elements, i.e., by welding, gluing, etc., to say nothing of two elements formed integrally, can be made to disengage provided there is enough force. And even integrally forming two elements previous joined by fastening means cannot unreleasably engage the two elements—as best can be understood. All that is required is enough force to overcome the bond.

7. Re – claim 11, lines 7 and 8, the recitation that “reversible movement...*is not possible*” is rejected. As asserted with respect to claim 9 above, reversible movement is possible, however difficult, with the application of enough force. Examiner suggests, --is hindered-- or --is hampered--, or similar, for example.

8. Claim 12 recites the limitation “the assembling” (2X) in lines 5 and 8. There is insufficient antecedent basis for this limitation in the claim. Examiner suggests --assembly--.

9. Claim 15 recites the limitation “the re-use” in line 6. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 19 recites the limitation “the gasket” in line 2. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3644

11. Any unspecified claim is rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 1 – 8 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No.

6,758,165 B2 to Pappas et al. (*Pappas*).

14. Re – claim 1, Pappas discloses the claimed invention including a feed dispenser comprising: a feed reservoir **50** for holding a nourishment, water; a feeding assembly **500** for conveying the nourishment from the feed reservoir **50** to an animal; and a coupler for unreleasably coupling the feeding assembly **500** to the feed reservoir **50** such that the feed dispenser is rendered non-reusable upon disengagement of the feeding assembly **500** from the feed reservoir **50** from a coupled position, set forth beginning at col. 12, line 49.

15. Re – claim 2, Pappas further discloses wherein the feeding assembly **500** receives a flow of nourishment from the feed reservoir **50**.

16. Re – claim 3, Pappas further discloses wherein the feed reservoir **50** comprises a first end and a second end, and wherein the second end has an orifice **103**.

17. Re – claim 4, Pappas further discloses wherein the feed reservoir **50** comprises a first end and a second end, and wherein the second end comprises a neck **502** having an orifice.

Art Unit: 3644

18. Re – claim 5, Pappas further discloses wherein the feeding assembly **500** comprises a conduit **502** having a first end and a second end, wherein the first end of the conduit **502** communicates with the orifice **103**, and the second end is a feeding orifice.

19. Re – claim 6, Pappas further discloses wherein the feeding assembly **500** further comprises a liquid conduit having a first end and a second end, wherein the first end mates with the neck **502** and communicates with the orifice of the neck **502**, and the second end is a feeding orifice **562**.

20. Re – claim 7, Pappas discloses the dispenser further comprising a means for suspending the feed dispenser, see Fig. 5, for example. As incredible as it seems, it would appear that the dispenser is being suspended by means of a canine's tongue.

21. Re – claim 8, Pappas discloses the dispenser further comprising an insect barrier **506**.

22. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

23. Claims 15, 16, 20 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 3,958,535 to Salvia.

24. Re – claims 15 and 20, Salvia discloses the claimed invention including a feed dispenser kit, comprising a feed reservoir **50** containing a feeding solution, set forth at col. 2, line 48, wherein the reservoir **50** has an orifice **103** at a first end, a frangible membrane, that portion of **6** behind orifice **15**, and a feeding assembly **25 – 27**.

Art Unit: 3644

25. Re – claim 16, Salvia further discloses a conduit **22**, which pierces, as at **24**, the membrane when the conduit **22** is inserted into the orifice **15**.

26. Re – claim 24, Salvia discloses a premixed liquid feeding solution, see Abstract, line 2, “premedicated water”.

Claim Rejections - 35 USC § 103

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. Claims 25, 26, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pappas as applied above.

29. Re – claim 25, Pappas discloses the claimed invention including a feeder kit comprising a container **50** comprising a threaded neck **52**; and a threaded screw cap **504** having at least one conduit **564** disposed thereon and a directional restriction member **518**, where the cap **504** screws onto a threaded neck **502** threaded onto the container **50**, and the directional restricting member **518** cooperates with a directional restricting member **517** allowing the cap **504** to be unreleasably screwed onto the neck **502**. However, Pappas does not disclose the container being the neck having the directional restricting member (**517**) integral with it. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make these components integral, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Howard v. Detroit Stove Works, 150 U.S. 164 (1983). Further, it would have been obvious to

Art Unit: 3644

one having ordinary skill in the art at the time the invention was made to so arrange the device, since it has been held that rearranging parts of an invention involves only routine skill in the art.

In re Japiske, 86 USPQ 70. In this case, all claimed parts are present in the prior art.

30. Re – claim 26, Pappas discloses the claimed invention including a hanger at a second end, from Fig. 5, it is apparent that the container 50 is somehow being suspended, or hung, as by some type of “hanger”, facetiously ‘incredibly’ as indicated above. However, for the purpose of this argument (and employing less incredible logic), it is clearly not being suspended from the first end. The “hanger” then could be a person holding the container inverted at or around the second end or somewhere between the first and second ends, or a “hanger” could be located between the first and second ends or at the second end, in either case, the “hanger” is lacking within the Figure, but clearly understood as something inherent—barring the aforementioned ‘incredible’. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a hanger at the second end, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

31. Re – claims 28 and 29, Pappas discloses “a liquid, colloidal system, suspension or the like” being dispensed, col. 2, lines 51 and 52. The terms ‘colloidal’ and ‘suspension’ include particles filtered both easily and less than easily from a fluid, which would include a solid feed dissolvable in water, since ‘dissolvable’ would inherently include: such particles; and a premixed liquid feeding solution.

32. Claims 17, 18, 21 – 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salvia in view of Pappas.

Art Unit: 3644

33. Re – claims 17, 21 and 27, Salvia discloses the invention substantially as claimed as applied above. However, Salvia does not disclose a flexible gasket surrounding an orifice.

Pappas teaches, as set forth at col. 2, beginning around line 20, that it is known in the prior art to include gaskets between two elements for the purpose of, presumably, creating a liquid-tight seal between them. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Salvia to include a gasket as was known in the prior art in order to maintain a liquid-tight seal.

34. Re – claims 18 and 22, in light of the rejection of claim 26 above, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Salvia to include any type of hanger, as taught or obviated by Pappas, including a tab at the second end, in order to suspend the dispenser.

35. Re – claim 23, in light of the rejection of claims 17, 21 and 27 above, gaskets are inherently compressible and would inherently retain elements together by compression pressure exerted between two elements.

Allowable Subject Matter

36. Claims 9 – 13 are would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

37. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record discloses the feed dispenser as indicated above. However, the prior art of record does not disclose nor fairly teach at least one reservoir flange, and at least one feeding assembly flange engaging each other upon coupling of the two. Further, the prior art of record

Art Unit: 3644

does not disclose nor fairly teach the reservoir comprising a guide and a directional restrictor, a follower and a collocated directional restrictor engaging the first restrictor.

Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

11/26/04



**TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER**